

OFFICE OF THE ATTORNEY GENERAL

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Honorable J. David Stout
Mayor
Municipality of Fort Payne
200 Gault Avenue South
Fort Payne, AL 35967

Plumbers and Gas Fitters
Examining Board - Conflicts
of Interest - Gas Districts

It appears that public policy would prohibit a compliance officer with the Alabama Plumbers and Gas Fitters Board from serving as a member of the board of directors of the DeKalb-Cherokee County Gas District. However, such determination must ultimately be made by the appointing authority.

Dear Mayor Stout:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Does a compliance officer with the Alabama Plumbers and Gas Fitters Examining Board have a conflict of interest in serving as a member of the Board of Directors of the DeKalb-Cherokee Counties Gas District Board since the majority of the employees of that gas district hold master or journeyman gas fitter's certificates issued by that director's board and the individual involved is responsible for

enforcement and compliance with that board's statutory responsibilities in the area served by the gas district?

FACTS, LAW AND ANALYSIS

The following facts are set out in your request:

The DeKalb-Cherokee Counties Gas District is a gas utility providing service to the City of Fort Payne, and the district was formed by the cities of Fort Payne, Centre, and the Town of Collinsville in the early fifties. The mayor and town councils of those municipalities appoint all the directors to the board. We recently had a resignation on the board and had two applicants apply to the council to be appointed to that vacancy. The district is incorporated in accordance to provisions of Section 11-50-390, etc., 1950.

One of the applicants is employed as a compliance officer by the Alabama Plumbers and Gas Fitters Examining Board. All of the maintenance and installation employees of the gas district, with the exception of the general manager, marketing director and accounting and clerical employees, hold a gas fitters card issued by this board. This individual is also in the office from time to time carrying out acts on behalf of the examining board to insure compliance with the statutory duties set forth by that board in accordance with chapter 37 of title 34 of the Code of Alabama, 1975.

My research does not reveal any specific statutory or constitutional provision that would prohibit the compliance officer from serving as a member of the board of the DeKalb-Cherokee Counties Gas District. However, such service by the compliance officer in all likelihood constitutes a common law conflict of interest and is against public policy.

Common law prohibits an officer or public employee from performing duties which would be incompatible with his public duties. 63A Am.Jur.2d, "Public Officers and Employees," §§ 319, 322. Because day-to-day activities of the compliance officer involve interaction with the Gas District and its employees, it would appear that the compliance officer should not serve as a member of the board of directors of the gas district. See Opinion of the Attorney General to Honorable Thomas E. Blair, Chairman, East Brewton Water and Sewer Board, dated June 5, 1991, A.G. No. 91-00298, in which it was concluded that public policy prohibited the Street Superintendent for the City of East Brewton from serving on the East Brewton Water and Sewer Board if his duties as Street Superintendent involve daily interaction with the Water and Sewer Board.

CONCLUSION


It appears that public policy would prohibit a compliance officer with the Alabama Plumbers and Gas Fitters Board from serving as a member of the board of directors of the DeKalb-Cherokee County Gas District. However, such determination must ultimately be made by the appointing authority.

This question should also be addressed to the State Ethics Commission for a determination as to the applicability of the State Ethics Law.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact James R. Solomon, Jr., of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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